IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1139 of 2005

Shri Pravin Nivrutti Pagare ..Petitioner

V/s

1. Shri D.Shivanandhan,
Commissioner of Police, Thane
2. The State of Maharashtra
3. The Superintendent
Yerwada Central Prison,Pune ... Respondent

Shri U.N.Tripathi for the Petitioner
Smt.A.S.Pai,APP for the State

WITH

CRIMINAL WRIT PETITION NO.1140 of 2005

Sunil Mahadeo Khandagale .. Petitioner

V/s

1. Shri D.Shivanandhan,
Commissioner of Police,Thane
2. The State of Maharashtra
3. The Superintendent, Nasik
Road Central Pirson,Nasik ... ..Respondents

Shri U.N.Tripathi for the Petitioner

Shri D.S.Mhaispurkar,APP for Respondents

WITH

CRIMINAL WRIT PETITION NO. 1141 of 2005

Vijay Premnath Gosavi ..Petitioner

V/s

1. Shri D.Sivanandhan,
Commisioner of police,Thane
2. The State of Maharashtra
3. The Superitnendent
Nasik Road Central Prison,Nasik ..Respondents

Shri U.N.Tripathi for the Petitioner
Shri S.R.Borulkar,PP for the Petitioner

CORAM:S.B.MHASE AND S.R.SATHE,JJ
DATED: 30th AUGUST 2005

JUDGMENT (Per S.R.SATHE,J.) :-

1. These are the petitions filed under Article 226 of the Constitution of India, whereby the Petitioners have taken exception to the order of the detention passed against them by Respondent no.1, the Commissioner of Police, Thane on 7-3-2005 in exercise of the powers conferred by sub Section 1 of Section 3 of the

Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for the sake of convenience hereafter referred to as "the said Act").

2. Petitioners are involved in C.R.No.I 303/2004 registered at Ambernath Police Station for the offence punishable under Sections 324, 323, 504, 506 read with 34 of IPC, CR No.310/2004 registered at Ambernath Police Station for the offence punishable under Section 324 read with 34 of IPC and in the incidents narrated by witnesses A, B and C whose statements have been recorded on 27-1-2005 and 29-1-2005 respectively. As the Petitioners are the co-accused/co-associates involved in the same cases and incidents, these petitions are being disposed of by this common judgment.

3. The order of detention dated 7-3-2005 passed by Respondent no.1 against each of the above mentioned Petitioners is based on 2 CRs numbers and 3 in-camera statements.

4. One Sanjay Devendra Kamble, resident of Ordnance Estate, Ambernath filed a complaint on 31-10-2004 stating that about 8 days prior to 31-10-2004 one Sunil Mahadeo Khandagale demanded money from him. However, as he (complainant) refused to give the same, there was some hot exchange of words between complainant and Sunil Khandagale and since then Sunil Khandagale had a grudge

against the complainant. At that time, the other 2 Petitioners had taken side of Khandagale. On 31-10-2004 at about 7-00 p.m. when complainant was passing by the side of Jatale Hospital, situated on main road, Ambernath, the Petitioner accosted him and compelled him to sit in the autorickshaw and then they forcibly took the autorickshaw to Ordnance Estate, Ambernath. Then the complainant was draged out of rickshaw and the Petitioners in furtherance of their common intention assaulted him with iron rod and with wooden handle of hoe and gave him kicks and blows. The witnesses who were present near the place of offence did not dare to intervene due to fear of the Petitioner. The complainant therefore lodged a complaint with Ambernath Police station and it was registered at C.R.No.I 303 of 2004. Similarly, on 6-11-2004 when one Ajit Sitaram Tupe, friend of Sanjay Kamble was proceedings towards Central Hospital, where Sanjay was admitted, the Petitioner accosted him and threatened him that he should not give to meet his friend Sanjay Kamble and also caused injuries with razor and gave him kicks and blows. This incident was also noticed by passers by. However, nobody dared to intervene as the Petitioners were armed with deadly weapons and had created terror. As a result of the said incident Ajit Tupe lodged a complaint with Ambernath Police Station and it was registered at C.R.No.I 310/4 for the offence punishable under Section 324 read with 34 of IPC. In connection with both these C.R. numbers the Petitioners were arrested on 7-11-2004. However, they

were released on bail on 8-11-2004.

5. On 20-1-2005 Ambernath Police received one application sent by Tukaram Namdeo Chalke resident of village Javsai, Ordnance Estate, Ambernath wherein it was stated that the Petitioners were moving in the area with deadly weapons such as knife, chopper, sword and used to extort money as hapta from hoteliers, owners of garages and pedestrians. On 18-1-2005 at about 9-30 hours when the said person was returning from his work the Petitioners accosted him and forcibly took amount of Rs.430/- from his pocket and also gave threat to the said person. As a result of terror created by the Petitioners nobody helped the said person. When Police made enquiry they came to know that such incident had occurred but there was no person by name Tukaram Namdeo Chalke and the application was found to be pseudonymous. As the allegations made against the Petitioners were of very serious nature, Senior P.I. Ambernath Police recorded in-camera statements of three witnesses. Witness 'A', owner of a tempo gave a statement on 27-1-2005 that on 26-12-2004 his tempo was hired for delivery of goods and when he was returning at about 12-30 hours the Petitioners obstructed the tempo and at the point of sword they gave threats to the said witness and then forcibly took away amount of Rs.850/- from the said person and also snatched his golden chain which was on his person. At the relevant time, though the said witness made hue and cry nobody dared to intervene as the

Petitioners were armed with deadly weapon and the wittiness were frightened. Similarly witness "B" hotelier gave a statement on 29-1-2005 wherein also he narrated similar incident which had occurred. He also told the Police about overt acts committed by the Petitioners and narrated that the Petitioners at the point of deadly weapons threatened the said witness and extracted amount of Rs.1,500/- from cash counter of the hotel. Though the incident was winterised by several persons and customers in the hotel nobody dared to intervene as the Petitioners by their act had created a terror and wittiness were scared. Witness 'C', a resident of Ambernath, in his statement dated 29-1-2005 narrated the incident which had taken place on 22-12-2004 when the Petitioners had assaulted the witness on public road and by giving threats forcibly taken away amount of Rs.2,200/- and a wrist watch from the said witness. The Petitioners also gave threat that if witness would go and lodge a complaint they would finish him. As a result of the same the said witness did not lodge Police complaint immediately but when he received assurance from the Police to keep his identity secret he gave the said statement.

6. Considering the previous history of the Petitioners and their criminal activities mentioned above, the concerned Police authorities found that the Petitioners had victimised many people in the past and had crated a region of terror in Ordnance Estate, and in surrounding

area. The criminal activities carried out by the Petitioners had become more dangerous to the life and properly of the people residing in that area, hence a proposal for detention was made to the Commissioner of Police, Thane. After considering all the material placed before him and finding that the Petitioners Pravin Nivrutti Pagare and Sunil Khandgale were previously detained and had undergone complete detention period while the Petitioner Vijay Gosavi was in fact externed, they had not improved their conduct but on the contrary were carrying out similar criminal activities, the Commissioner of Police, Thane came to the conclusion that the Petitioners are dangerous persons. He therefore, passed order of detention on 7-3-2005 against each of the Petitioners mentioned above. The said order of detention along with grounds of detention was served on each of the Petitioners and they were also provided with copies of documents on which the Respondent no. 1 had placed reliance. Further necessary procedure of such detention order was also followed.

7. The order of detention passed against the Petitioners is challenged in the respective petition on several grounds. However, Mr.Tripathi, learned Advocate for the Petitioners has pressed into service only two grounds viz. ground Nos.A and D. The said grounds are as follows :-

A) "The Petitioner says and submits that the conclusion

recorded by the detaining authority in the grounds of detention that the detente is a "Dangerous Person" and that his activities are prejudicial to the maintenance of Public Order is false, and baseless. The further satisfaction as recorded that the dented being a free person will again, indulge in similar prejudicial activities is erroneous and baseless. The satisfaction of the detaining authority vitiation. The Order of detention is illegal and bad in law, ought to be quashed and set aside.

D) The Petitioner says and submits that the detaining authority has taken into consideration two criminal cases registered gains the dented vide C.R.no.I 303 of 2004 and 310 of 2004. The incidents are narrated in para no.4(a) and 4(b) of the grounds of detention. The Petitioner says and submits that if the said incidents as narrated in the grounds are closely and minutely examined by no stretch of imagination a man of prudence will held that the alleged activities of the dented has disturbed Public Order. Moreover the detaining authority has not disclosed as to how and in what manner Public Order is disturbed. The Petitioner says and submits that if the Public Order is not disturbed it is not justified to clamp detention order against a person. The Order of detention is illegal and bad in law, ought to be quashed and set aside".

8. According to the learned Advocate for the

Petitioners, the alleged acts attributed to the Petitioners mentioned in RC No.303 of 2004 and 310/2004 were in fact the acts committed against the individuals and not subversive of public order and therefore the detention on the ostensible ground preventing the Petitioners from acting in a manner prejudicial to public order was not justified. According to him, even if the allegations made against the Petitioners in the said 2 CRs and 3 in-camera statements are taken into consideration, at the most it can be said that the said acts were likely to affect the "law and order" or it had affected "law and order" but in any event the same had not affected the "public order". As against this the learned APP Smt.A.S.Pai, (in W.P.No.1139/2005), learned APP Mr.D.S.Mhaispurkar, (in W.P.No.1140/2005) and learned PP Mr.S.R.Borulkar, (in W.P.No.1140/2005) submitted that there was enough incriminating material before the detaining authority to show that the acts of the Petitioners had disturbed the even tempo of the life of the community and as such order of detention is legal and valid.

9. In order to find out whether there is any sustenance in the argument advanced by the learned Advocate for the Petitions it would be worthwhile to see what Section 3 of the said Act says. It runs as follows :-

> 3. (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

2) ..

3) ..

10. The crucial point which falls for our counteraction is whether the activities of the Petitioner had only disturbed the "law and order" or "public order". The word "public order" is not defined in the said Act. However, distinction between disturbance of Public Order and disturbance of law and order has been made out by the Apex Court in their various pronouncements. Even then no straight jacket formula is provided from which one can distinguish disturbance of public order from disturbance of law and order. The true distinction between words "Law and Order" and "Public Order" lies not merely in the nature or quality of the act, but in the reach of degree and extent of its reach upon the society. It is needless to say that that contravention of any law always affects order but before it can be said to affect public order, it must affect the community or public at large. For this purpose, line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. We cannot ignore the fact that the nature of the act, circumstances of its commission, the impact on people around and such like factors constitute the pathology of public disorder.

11. In a case, **Gulab Mehra V/s State of U.P. and Ors. in AIR 1987 SC 2332** Their Lordships have observed

> "Thus whether an act relates to law and order or to public order depends upon the impact of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order."

12. Keeping in mind the above position of law we have scanned the material on record which was relied upon by the detaining authority. From the perusal of the said material it is clear that the Petitioners were involved in the offences punishable under Chapter XVI and Chapter XVII of IPC. From the perusal of in-camera statements of witnesses A, B and C, it is clear that 2 incidents had taken place on a public road and one in hotel. The Petitioners at point of deadly weapons extorted money and given threats. However, at the time of all those 3 incidents though other persons from public were present nobody made an attempt to intervene as they were scared. The Petitioners had in fact made a scene which attracted the attention of several people in the locality. The incident mentioned in the application received by the Police also had taken place in a public place. Though Police searched for the applicant they could trace him and that application appeared to be pseudonymous. However, Police were convinced about the happening of the incidents. So, this also indicates that the criminal activities of the Petitioners had created so much fear in the minds of the public at large that even in the cases where individual persons were actually and directly

affected they did not prefer to file a complaint by disclosing their identity. So, this itself shows the manner in which the Petitioners were carrying out criminal activities and it had made an impact on the community at large and even the residents and passers by in that locality were not ready to come forward and help the victim because they were scared and apprehending more danger to their life and property. So, the activities reflected in 2 C.Rs and 3 in-camera statements were certainty prejudicial to the maintenance of the public order. Admittedly, the Petitioner in Criminal Writ Petition No.1139 of 2005 Mr.Pravin N.Pagare was previously detained by virtue of detention order dated 11-7-2003 and was released only after expiry of detention period. Similarly the Petitioner in Criminal Writ Petition NO.1140 of 2005 viz. Sunil Khandagale was also detained under the said Act for the period of one year. So far as the Petitioner in Criminal Writ Petition No.1141 of 2005 viz. Vijay Gosavi is concerned, order of exterment was in fact passed against him on 18-5-2004 whereby he was externed for 2 years. In spite of such background the Petitioners again committed acts which are punishable under Chapters XVI and XVII of IPC. The previous detention as well as externment order had not made any impact on the Petitioners and they had not improved their conduct. It was noticed that the Petitioners were repeatedly indulging in the activities which were prejudicial to the maintenance of public order. So, under such circumstances the detaining

authority was justified in passing the detention order against the Petitioners.

13. In view of the above position, there is no substance in the argument advanced by the learned Advocate for the Petitioners. There is no reason to interfere with the order of detention passed against the Petitioners. Hence petitions are dismissed. Rule discharged.

(S.R.SATHE,J.) (S.B.MHASE,J.)